

**AN ORDINANCE
BY**

AN ORDINANCE AUTHORIZING THE MAYOR TO EXECUTE AN AMENDMENT TO FC-6040-94, AIRPORT RETAIL CONCESSIONS, WITH HOST/NATIONAL CONCESSIONS MANAGEMENT, LLC. ("HOST/NCM"), TO BE EFFECTIVE AS OF SEPTEMBER 1, 2007 THROUGH JANUARY 31, 2008, FOR THE PURPOSE OF INCREASING THE PERCENTAGE RENTAL FEE TO BE PAID BY HOST/NCM; AUTHORIZING HOST/NCM TO PROVIDE, AND THE CITY TO ACCEPT AIRPORT RETAIL CONCESSIONS AT HARTSFIELD-JACKSON ATLANTA INTERNATIONAL AIRPORT UNDER THE TERMS SET FORTH IN CONTRACT FC-6040-94, AS AMENDED, BEGINNING SEPTEMBER 1, 2007 AND CONTINUING UNTIL THE CITY PROCURES AND EXECUTES A NEW AGREEMENT FOR AIRPORT RETAIL CONCESSIONS, BUT NOT TO EXTEND BEYOND JANUARY 31, 2008; AUTHORIZING THE CITY TO WAIVE THE COMPETITIVE SOURCE SELECTION REQUIREMENTS CONTAINED IN SECTION 2-1187, 2-1188, AND 2-1189 OF ARTICLE X, PROCUREMENT AND REAL ESTATE CODE, AS WELL AS ANY OTHER CONFLICTING PROVISIONS OF THE CITY OF ATLANTA CODE OF ORDINANCES; AND FOR OTHER PURPOSES.

WHEREAS, the City of Atlanta (the "City"), as owner and operator of the Hartsfield Jackson Atlanta International Airport (the "Airport") entered into Concession Agreement FC-6040-94 (the "Lease") with Host/NCM which became effective on April 1, 1995, for the establishment and operation of Airport retail concessions on Concourses B, C, D and T at Hartsfield-Jackson Atlanta International Airport; and

WHEREAS, as the result of various amendments, the term of the Lease was extended through January 5, 2007; and

WHEREAS, during the term of the Lease, the Department of Aviation determined that the procurement of new Airport retail concessions services would not be completed prior to January 5, 2007; and

WHEREAS, by Ordinance 06-O-2704, the City Council approved the extension of the Lease, on a month-to-month basis, through August 31, 2007; and

WHEREAS, the Departments of Procurement and Aviation have determined that additional time will be required to ensure fairness and maximize competition in the procurement of new concessions; and

WHEREAS, it is in the City's best interest to provide for the continuation of Airport retail concessions services until such time as the procurement of a new Airport retail concessions agreement has been completed; and

WHEREAS, in recognition of current market conditions, the Department of Aviation and Host/NCM desire to amend the Lease, effective September 1, 2007 through January 31, 2008, to increase the percentage rent to be paid by HOST/NCM to 17% of Gross Revenues for all news and gift stores and 15% of Gross Revenues for all other stores, with the exception of electronic stores, which will remain at 11% of Gross Revenues; and

WHEREAS, the Aviation General Manager and Chief Procurement Officer have recommended that HOST/NCM be authorized to continue providing Airport retail concessions services, uninterrupted, and the City be authorized to accept such services, under the terms set forth in Contract FC-6040-94, as amended, until such time as a new contract for Airport retail concessions services has been procured and executed.

THE CITY COUNCIL OF THE CITY OF ATLANTA, GEORGIA, HEREBY ORDAINS:

SECTION 1: That the Mayor is authorized to execute an Amendment to FC-6040-94, to be effective as of September 1, 2007 through January 31, 2008, for the purpose of increasing the percentage rent to be paid by HOST/NCM to 17% of Gross Revenues for all news and gift stores and 15% of Gross Revenues for all other stores, with the exception of electronics stores, which will remain at 11% of Gross Revenues.

SECTION 2: That the City Attorney is directed to prepare an appropriate Amendment for execution by the Mayor.

SECTION 3: That the Amendment will not become binding on the City and the City will incur no obligation or liability under it until it has been executed by the Mayor, attested to by the Municipal Clerk, approved as to form by the City Attorney and delivered to HOST/NCM.

SECTION 4: That HOST/NCM is authorized to provide Airport retail concessions services, and the City is authorized to accept such services, under the terms set forth in FC-6040-94, as amended, beginning on September 1, 2007 and continuing until the City procures and executes a new agreement for Airport retail concessions, but not to extend beyond January 31, 2008.

SECTION 5: That all ordinances or parts of ordinances in conflict with this ordinance, including but not limited to Section 2-1187, 2-1188, and 2-1189 of the City of Atlanta Code of Ordinances, are waived to the extent of the conflict.

Part II: Legislative White Paper: (This portion of the Legislative Request Form will be shared with City Council members and staff)

A. To be completed by Legislative Counsel:

Committee of Purview:

Caption:

Council Meeting Date:

Requesting Dept.:

B. To be completed by the department :

1. Please provide a summary of the purpose of this legislation (Justification Statement).

Example: The purpose of this legislation is to anticipate funds from a local assistance grant to purchase child safety seats.

An ordinance authorizing the Mayor to execute an Amendment to FC-6040-94, to be effective as of September 1, 2007 through January 31, 2008, for the purpose of increasing the percentage rent to be paid by HOST/NCM to 17% of Gross Revenues for all news and gift stores and 15% of Gross Revenues for all other stores, with the exception of electronics stores, which will remain at 11% of Gross Revenues.

2. Please provide background information regarding this legislation.

Example: The task force of homelessness conducted a study regarding homelessness, its impact and consequences on the City. This resolution reflects the Mayor's desire to open a twenty-four hour center that will respond to the needs of the homelessness in Atlanta.

The City of Atlanta, and Host/NCM entered into an Agreement and Lease of Premises dated April 1, 1995, incorporating Amendments No. 1 through No. 3 (hereinafter collectively referred to as the "Lease Agreement"), and uses certain premises and facilities in the Terminal Building and Concourses of the Central Passenger Terminal Complex at Hartsfield-Jackson Atlanta International Airport;

Resolution No. 96-R-0205 adopted February 19-27, 1996 and approved March 3, 1996 established the commencement date of the Lease Agreement as April 30, 1996 and increased the term of the Lease Agreement 250 days to account for unanticipated pre-Olympic construction cost and Resolution No. 01-R-1008 adopted July 16, 2001 and approved July 25, 2001 transferred The Charnel Company, Inc.'s rights, title, interest and liabilities in the Host/Charnel Joint Venture to National Concessions Management, LLC ("NCM") (Amendment No. 1);

Ordinance No. 00-O-0983 adopted August 7, 2000 and approved August 13, 2000 extended the lease agreement for one additional period of five (5) years and adjusted the method of calculating the Minimum Annual Guarantee (MAG) using the tenant's 1999 MAG as a base (Amendment No. 2);

Resolution No. 04-R-1312 adopted August 16, 2004 and approved August 25, 2004 amended the Lease Agreement in order to add 3,002 square feet (385 square feet at gate C24 and approximately 2,617 square feet at gate C15) of Exclusive Leased Premises on the Boarding Level of Concourse C to provide for expansion of Concessions operations for the benefit of passengers utilizing Concourse C (Amendment No. 3);

Amendment No.1 and Amendment No.2 incorporating the Lease Agreement established a ten year and 250 day term which determines the Lease Agreement expiration date as January 5, 2007;

Ordinance No 06-O2704 established the contract expiration date as August 31, 2007;

3. If Applicable/Known:

(a) **Contract Type (e.g. Professional Services, Construction Agreement, etc):**

(b) **Source Selection:**

(c) **Bids/Proposals Due:**

(d) **Invitations Issued:**

(e) **Number of Bids:**

(f) **Proposals Received:**

(g) **Bidders/Proponents:**

(h) **Term of Contract:**

4. Fund Account Center:

5. Source of Funds: *Example: Local Assistance Grant*

6. Fiscal Impact:

Example: This legislation will result in a reduction in the amount of _____ to Fund Account Center Number _____.

7. Method of Cost Recovery:

Examples:

- a. Revenues generated from the permits required under this legislation will be used to fund the personnel needed to carry out the permitting process.*
- b. Money obtained from a local assistance grant will be used to cover the costs of this Summer Food Program.*

This Legislative Request Form Was Prepared By: Marlene Coleman

TRANSMITTAL FORM FOR LEGISLATION

TO: MAYOR'S OFFICE

ATTN: GREG PRIDGEON

Dept.'s Legislative Liaison: Anita Williams

Contact Number: 404-530-6600

Originating Department: Aviation

Committee(s) of Purview: Transportation

Chief of Staff Deadline: 8/13/07

Anticipated Committee Meeting Date(s): 8/29/07

Anticipated Full Council Date: 9/04/07

Commissioner Signature: Red [Signature]

Chief Procurement Officer Signature: [Signature]

CAPTION

AN ORDINANCE AUTHORIZING THE MAYOR TO EXECUTE AN AMENDMENT TO FC-6040-94, AIRPORT RETAIL CONCESSIONS, WITH HOST/NATIONAL CONCESSIONS MANAGEMENT, LLC. ("HOST/NCM"), TO BE EFFECTIVE AS OF SEPTEMBER 1, 2007 THROUGH JANUARY 31, 2008, FOR THE PURPOSE OF INCREASING THE PERCENTAGE RENTAL FEE TO BE PAID BY HOST/NCM; AUTHORIZING HOST/NCM TO PROVIDE, AND THE CITY TO ACCEPT AIRPORT RETAIL CONCESSIONS AT HARTSFIELD-JACKSON ATLANTA INTERNATIONAL AIRPORT UNDER THE TERMS SET FORTH IN CONTRACT FC-6040-94, AS AMENDED, BEGINNING SEPTEMBER 1, 2007 AND CONTINUING UNTIL THE CITY PROCURES AND EXECUTES A NEW AGREEMENT FOR AIRPORT RETAIL CONCESSIONS, BUT NOT TO EXTEND BEYOND JANUARY 31, 2008; AUTHORIZING THE CITY TO WAIVE THE COMPETITIVE SOURCE SELECTION REQUIREMENTS CONTAINED IN SECTION 2-1187, 2-1188, AND 2-1189 OF ARTICLE X, PROCUREMENT AND REAL ESTATE CODE, AS WELL AS ANY OTHER CONFLICTING PROVISIONS OF THE CITY OF ATLANTA CODE OF ORDINANCES; AND FOR OTHER PURPOSES.

FINANCIAL IMPACT (if any)

Mayor's Staff Only

Received by CPO: _____ Received by LC from CPO: _____
(date) (date)

Received by Mayor's Office: 8/16/07 [Signature] Reviewed by: _____
(date) (date)

Submitted to Council: _____
(date)